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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/214,140      | 04/08/1999  | TAKEO KAWASE         | P3299B              | 5881             |

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EXAMINER

TRAN, DZUNG D

ART UNIT

PAPER NUMBER

2633

DATE MAILED: 07/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                 |                          |
|------------------------------|-----------------|--------------------------|
| <b>Office Action Summary</b> | Application No. | Applicant(s)             |
|                              | 09/214,140      | KAWASE ET AL. <i>(f)</i> |
| Examiner                     | Art Unit        |                          |
| Dzung D Tran                 | 2633            |                          |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 08 April 1999.
- 2a)  This action is FINAL.                            2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1-8, 15 and 16 is/are pending in the application.
- 4a) Of the above claim(s) 9-14 and 18-49 is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1-8, 15 and 16 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All b)  Some \* c)  None of:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a)  The translation of the foreign language provisional application has been received.
- 15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

|   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                     | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                            | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>6-10</u> . | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Specification***

1. Applicant's election of species 1, claims 1-8 and 15, 16 in Paper No. 11 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Sakanaka et al. U.S. patent no. 5,680,241.

In considering claim 1, Sakanaka et al. disclose an optical communication device comprising:

at least one transmitter (figure 16, element 33) modulating a plane of polarization (figure 16, element 35) of laser light, and then emitting a modulation result as a transmission signal (figure 16, column 17, lines 12-27); and  
at least one receiver (figure 16, element 34) selectively receiving light of a specific polarization state (figure 16, column 17, lines 12-27).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-8 and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakanaka et al. U.S. patent no. 5,680,241 in view of Funke U.S. patent no. 4,987,897.

In considering claims 2-8 and 15-16, Sakanaka et al. disclose an optical communication device comprising:

at least one transmitter (figure 16, element 33) modulating a plane of polarization (figure 16, element 35) of laser light, and then emitting a modulation result as a transmission signal (figure 16, column 17, lines 12-27); and at least one receiver (figure 16, element 34) selectively receiving light of a specific polarization state (figure 16, column 17, lines 12-27). Sakanaka et al. differ from claims 2-8 and 15-16 of the present invention in that Sakanaka et al. do not disclose for one of said transmitter and said receiver is disposed

inside a strongly dispersing medium (claim 2), one of said transmitter and said receiver is disposed in a strongly dispersing medium, and the other of said transmitter and said receiver is disposed outside said strongly dispersing medium (claim 3), strongly dispersing medium is a living body (claim 4), strongly dispersing medium is a human body (claim 5), a controller controlling communication between said internal transmitting/receiving device and said external transmitting/receiving device (claims 6-8) and communication device for physiological use (claims 15-16).

In considering claim 2, Funke discloses a body bus medical device communication system (figure 1) wherein one of said transmitter (figure 1, element 27) and said receiver (figure 1, element 27) is disposed inside a strongly dispersing medium (column 6, lines 25-34). It would have been obvious to an artisan at the time of the invention was made to replace the transmitter and receiver taught by Sakanaka in the system of Funke in order to control and detect the optical signal inside the body.

In considering claim 3, Funke further discloses one of said transmitter and said receiver is disposed in a strongly dispersing medium, and the other of said transmitter and said receiver is disposed outside said strongly dispersing medium (figure 1, column 6, lines 25-34).

In considering claim 4, Funke further discloses strongly dispersing medium is a living body (figure 1, column 2, line 24).

In considering claim 5, Funke further discloses strongly dispersing medium is a human body (figure 1, column 7, line 28).

In considering claims 6-8, Funke further discloses a controller controlling communication between said internal transmitting/receiving device and said external transmitting/receiving device (figure 1, element 16, column 7, line 12-34).

In considering claims 15-16, Funke further discloses a communication device for physiological use (column 1, lines 8-12).

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Silver U.S. patent no. 6,005,709. Microscope system for using transmitted light to observe living organisms.
- b. Barreras U.S. patent no. 5,807,397. Implantable stimulator with replenishable, high value capacitive power source and method therefore.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dzung Tran whose telephone number is (703) 305-0932.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Jason Chan, can be reached on (703) 305-4729.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9314.

Art Unit: 2633

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.



JASON CHAN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600